

L87-0429282.DOC

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS  
Civil Action Number: 2005 CV 10488 JLA

TIMOTHY HILLS,

Plaintiff

vs.

TOWN OF STOUGHTON,

DAVID M. COHEN, Individually and  
MANUEL CACHOPA, Individually

Defendants

## **MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER**

### **Brief Background**

On December 9, 2004, the plaintiff filed a Verified Complaint in the Norfolk Superior Court naming the Town of Stoughton as a defendant and alleging civil rights violations, harassment, false imprisonment, infliction of emotional distress, assault, battery, invasion of privacy and deceit and fraud stemming from an incident that occurred in April 2002. The complaint alleges that David Cohen, a police officer for the Town of Stoughton, contacted and threatened to prosecute the plaintiff if he did not pay a debt owed to a third party. The plaintiff alleges that Cohen acted under the cover of law, assaulted and falsely arrested the plaintiff as well as causing the plaintiff significant apprehension, embarrassment and fostered an atmosphere of intimidation. The matter was removed to this Court on March 14, 2005. The Town answered the complaint on March 16, 2005. On September 13, 2005, the plaintiff moved to amend the complaint and name David Cohen and Manuel Cachopa, the Town of Stoughton Chief of Police. The amended complaint raises the same allegations against David Cohen as contained in the original complaint.

Since the alleged incident of April 2002 not less than two investigations into the incident have been undertaken by the City of Stoughton Police Department. The attorney general's office has assigned a special prosecutor to investigate the allegations and David Cohen has been placed on

paid suspension pending the investigation. David Cohen has been criminally charged with several counts which are still pending against him.

The plaintiff served Interrogatories and Request for Production of Documents on May 10, 2006 to David Cohen. Answers to these discovery request are due shortly.

### **Argument**

- 1. This court should issue a protective order prohibiting David Cohen to have to answer written discovery, admissions or answer deposition testimony based upon the defendant's rights against self-incrimination.**

Currently there are several serious criminal charges pending against David Cohen. These charges include wrongful imprisonment, three count of witness intimidation, assault and battery, using his position to force the plaintiff to pay debt to a third party, violating the state ethics law by using his position in a matter in which he had a financial interest and filing a false report. Moreover, David Cohen has been suspended as a police officer from the Town of Stoughton pending these charges and the investigation.

The courts have recognized that the Fifth Amendment privilege against self-incrimination "applies alike to civil and criminal proceedings, whenever the answer might tend to subject to criminal responsibility him who gives it." McCarthy v. Arndstein, 266 U.S. 34, 40, 45 S. Ct. 16, 17, 69 L. Ed. 158 (1924). Where criminal charges are pending against David Cohen, he should not be made to answer any question about this incident in the present civil case. The information that he provides during the civil case could and would certainly be used against him in the criminal trial.

### **Conclusion**

Wherefore, the defendant David Cohen requests this honorable court issue a protective order prohibiting him from answering any written discovery, admissions or deposition until the

pending criminal charges against him are resolved.

/s/ John F. Gleavy

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**AFFIDAVIT OF JOHN F. GLEAVY**

I John F. Gleavy do under oath depose and swear:

1. That I have been retained to represent David M. Cohen in the above entitled matter;
2. That I have informed David M. Cohen that discovery has been propounded upon him and it is my understanding that his wish is to have discovery stayed until the conclusion of the criminal matter;
3. That I also understand that David M. Cohen would insist that all answers would include the phrase, "The defendant respectfully refuses to answer this question as it may violate my fifth amendment rights."

Signed under pains and penalties of perjury this 6<sup>th</sup> day of July, 2006.

/s/ John F. Gleavy

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John F. Gleavy

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants upon receipt of notification of same from the court.

/s/ John F. Gleavy

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